

Appn. No.: 10/774,021
Non-Compliant Amendment Dated January 24, 2006
Reply to Non-Compliance of January 18, 2006

ARK-153US1

Remarks/Arguments:

In response to the Notice of Non-Compliant Amendment, Applicant has redrafted the status identifier of the claims in accordance with 37 CFR 1.121. Applicant submits that this Amendment is now in compliance.

I. Election/Restriction

Applicant maintains its traversal of the restriction requirement for the reasons set forth in Applicant's reply filed March 4, 2005.

II. Specification

Applicant has amended the specification to note that the parent application issued to US Patent Number 6,706,267. As such, Applicant respectfully requests that this objection be withdrawn.

III. Oath/Declaration

The Oath or Declaration has been declared defective. Applicant attaches a Declaration in compliance with 37 CFR 1.67(a). Specifically, Applicant attaches a copy of the Declaration filed in the parent application as proscribed by 37 CFR 1.63(d)(1). As such, Applicant respectfully requests that this objection be withdrawn.

IV. Claim Objections

Claim 49 is objected to for reciting, "HCl" instead of "HCl." Applicant has amended claim 49 to recite "HCl", and, as such, respectfully requests that this objection be withdrawn.

V. Specification Amendments

Applicant has amended the specification by replacing the unpublished document "U.S. Serial number 09/233,379" with the published document "International Publication Number WO 00/43020." International Publication Number WO 00/43020 is the PCT counterpart to U.S. Serial number 09/233,279, and, as such, the documents are identical in substance. Therefore, Applicant respectfully submits that this amendment does not add new matter to the application.

Appn. No.: 10/774,021
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ARK-153US1

VI. Claim Amendments

Applicant has amended claim 46 to set forth the limitation that the active egg fraction further comprises "supranormal levels of an anti-inflammatory composition." Support for this amendment can be found throughout the application, such as, for example, on page 14, lines 21-27.

VII. Claim Rejections - 35 USC § 112, Second Paragraph

Claims 46 and 48-51 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In view of the amendments made to the specification and the claims, Applicant respectfully traverses this rejection.

The Examiner has taken the position that the specification does not clearly define what an "active" egg fraction is, other than an egg yolk in claim 47 (not rejected). Applicant has amended claim 46 to recite that the "active egg fraction" comprises "supranormal levels of an anti-inflammatory composition." As such, Applicant has defined "active" egg fraction in the claim itself using language having support in the specification. The "anti-inflammatory composition" is defined in the present application to mean the anti-inflammatory composition disclosed in International Publication Number WO 00/43020 (see page 11, lines 16-18). Therefore, Applicant respectfully submits that the term "active" egg fraction is now more clearly defined in the specification as well as in the claim itself.

Claim 49 is rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because claim 49 recites an improper Markush group. Applicant has amended claim 49 to set forth a proper Markush grouping as directed by the Examiner.

Applicant respectfully submits that, in view of the amendments made to the claims, and the arguments presented above, the rejection of claims 46 and 48-51 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, should be withdrawn.

Appn. No.: 10/774,021
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ARK-153US1

VII. Claims Rejections – 35 USC § 102 (Kondo et al.)

Claim 46 is rejected under 35 USC § 102(b) as being anticipated by Kondo et al. (US 4,367,309). Applicant respectfully traverses the rejection as applied to amended claim 46.

The Examiner describes Kondo et al. as disclosing a composition comprising a glycoprotein containing a carbohydrate, wherein the glycoprotein is egg albumin and the carbohydrate is glucosamine. Amended claim 46 sets forth an active fraction comprising supranormal levels of an anti-inflammatory composition. Kondo et al. do not disclose or imply that the egg albumin comprises supranormal levels of the anti-inflammatory composition disclosed in the present application.

In view of the amendment to claim 46 and the arguments presented above, Applicant respectfully requests that the rejection of claim 46 under 35 USC § 102(b) as being anticipated by Kondo et al. be withdrawn.

VII. Claim Rejections – 35 USC § 103 (Adalsteinsson in view of Yue)

Claims 46-51 are rejected under 35 USC § 103(a) as being unpatentable over Adalsteinsson et al. (WO 99/36077) in view of Yue (US 6,251,863). Applicant respectfully traverses this rejection.

The Examiner suggests that one of ordinary skill in the art would have had a reasonable expectation of success that glucosamine would work in Adalsteinsson's method because Adalsteinsson uses an "anti-inflammatory drug", and glucosamine is a known anti-inflammatory treatment. Applicant respectfully disagrees. Initially, Applicant wants to make clear that the "anti-inflammatory drug" (i.e. NSAID or DMARD) used by Adalsteinsson is not a fraction of the hyperimmune egg. More importantly, there is no mention or even suggestion in Adalsteinsson of an active fraction in Adalsteinsson's hyperimmune egg comprising supranormal levels of an anti-inflammatory composition as set forth in the present claims.

Further, there would be no need in Yue for the use for the hyperimmune egg of Adalsteinsson as there is no need to protect the gastrointestinal tract from damage from glucosamine. Adalsteinsson specifically teaches the use of the hyperimmune egg to protect the gastrointestinal tract from damage resulting from NSAIDs or DMARDs. NSAIDs and DMARDs

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ARK-153US1

are well known in the art to cause severe gastrointestinal damage, especially when taken in high doses. There is no such effect/damage caused by glucosamine, and, as such, there would be no motivation for one having skill in the art to turn to Adalsteinsson for use of the hyperimmune egg together with Yue's disclosure of glucosamine.

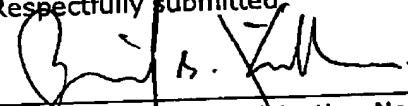
In view of the above, Applicant respectfully requests that the rejection of claims 46-51 under 35 USC § 103(a) as being unpatentable over Adalsteinsson et al. in view of Yue be withdrawn.

IX. Double Patenting

Claims 46-51 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of US Patent No. 6,706,267 B1. In response, upon allowance of claims 46-51, Applicant agrees to submit a Terminal Disclaimer in accordance with 37 CFR § 1.321(c).

X. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance and favorable action is earnestly solicited. If it would expedite prosecution, the Examiner is invited to confer with the undersigned representative.

Respectfully submitted,


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Dated: February 15, 2006

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